

## PRACTITIONERS' NOTES

*[The following notes highlight the major changes in practice before the Court made by the current Rules revision; they do not cover all changes, and practitioners are responsible for becoming familiar with all changes.]*

**Rule 3.** Rule 3(c) now provides more detail as to the contents of a Notice of Appeal and that correspondence from claimants will be liberally construed in determining the timely filing of a Notice of Appeal.

Rule 3(h) now states that all Court transactions are conducted in English and requires an English translation whenever a document in a foreign language is filed (including in the record on appeal).

**Rule 5.** Rule 5(a) now specifically provides for the use of a joint motion to stay proceedings to allow time for settlement or remand negotiations (rather than moving for an extension under Rule 26). Such a motion or motions will not be granted in any case for more than a total of 90 days.

Rule 5(b) now states that a motion to stay is effective only if granted, and Rule 5(c) prohibits combining a motion for a stay with any other motion.

**Rule 6.** This new Rule recognizes the appellant's or petitioner's right to privacy by requiring that the VA claims number not be put on motions, briefs, or responses (although it is still required to be on the Notice of Appeal so that officials can match the correct VA file with the appellant), and by requesting that it also be redacted from any document filed in connection with such pleadings.

**Rule 11.** Rule 11(a)(2) now provides that the time for filing the record on appeal starts with the passage of the time for a counter designation or the service of the counter designation, whichever is sooner.

**Rule 21.** Rule 21(c) now requires that petitions and answers meet all format requirements of briefs (Rule 32) and cannot exceed 20 pages.

**Rule 25.** Rule 25(a)(3) now notes that confirmation of a filing in the Court can be confirmed by reference to the case docket on the Court's web site ([www.vetapp.gov](http://www.vetapp.gov)).

Rule 25 (d) now provides that service on another party in a particular case may be by fax if that party agrees thereto in writing (in order to forestall later disputes about service).

**Rule 26.** Rule 26(b) now places new restrictions on motions for an extension of time, most notably a motion or motions may not be granted for more than a total of 30 days' more time based on "workload" for any particular pleading and, effective July 1, 2003, a motion or motions for any further extension (for any "good cause" reason other than workload) for any particular pleading, may not be granted without an accompanying affidavit or certificate of good cause (similar to the Federal Circuit rule). Also effective on July 1, 2003, motions for extensions totaling more than 30 days for a particular filing must, barring extraordinary circumstances, be filed 14 days before the end of the period sought to be extended, and oppositions to those motions must be filed not later than 5 days after service (a deviation from the 14-day period in Rule 27(b)). Time periods are extended only if the Court grants the motion.

Rule 26(d) now provides that motions to extend time may not be combined with any other motion.

**Rule 27.** Rule 27(d) now provides that motions are limited to 20 pages in length.

**Rule 28.** Rule 28(e) now prohibits motions in lieu of a brief. This change does not preclude the filing of motions for summary disposition *outside* the briefing process. It also prohibits including any motion in a brief (including a motion for oral argument, *see* new Rule 34(a)).

**Rule 32.** Rule 32(b) now adopts a larger typeface size closer to (but not as large as) the Federal Rules of Appellate Procedure typeface standard applied by the Federal Circuit. Suggested typefaces are Times New Roman or Arial @ 13-point (proportional types) or Courier New @ 12-point (monospaced type).

Rule 32(i) now directs the Clerk to return briefs that do not comply with all of that Rule's requirements. Besides erroneous typeface, binding down the side is a significant violation.

**Rule 34.** Rule 34(a) now provides that the time for filing a motion for oral argument is extended to 14 days after the date the reply brief is due or filed, whichever is sooner.

Rule 34(f) now requires immediate notice to the Clerk of settlement negotiations, and notice of settlement at least 3 days before oral argument is scheduled.

**Rule 38.** Rule 38 now applies to all filings in the Court.

**Rule 39.** Rule 39 now provides more guidance on supplemental applications (*see* Rule 39(d)), and sets the filing date for supplemental applications at 20 days (because the date for otherwise entering judgment is the 21st day after issuance of a disposition). Also, a supplemental application must contain accounting for its own submission (to avoid a potentially endless parade of supplemental applications).

**Rule 40.** This new Rule establishes new provisions for membership on the Rules Advisory Committee, a body that has provided important service to the Court (and to the bar).

**Rule 41.** Rule 41(a) now clarifies that a mandate is merely evidence of finality, not a document that creates finality and starts the period for filing an application for attorney fees and expenses; that period starts on the 61st day after judgment is entered.

Rule 41(b) now addresses applications for attorney fees and expenses; *see* "Judgments and Mandates" below.

**Rule 42.** Rule 42 now clarifies that "termination" relates only to the merits of an appeal or petition, never to an application for attorney fees and expenses.

**Rule 45.** Rule 45(k) is added to make clear that the Clerk has the authority to return documents that do not comply with these Rules. The Court has directed the Clerk to exercise this new authority.

**Rule 47.** Rule 47(a) now allows for ordering expedited proceedings at any stage (not just for briefing), and establishes criteria under which the Court may find good cause, based on exceptional circumstances, for expediting proceedings. It is intended that every effort will be made to decide

the case as quickly as possible when an expedited-proceedings motion is granted.

## **RELATED MATTERS**

**Judgments and Mandates.** Under a change to the Court's Internal Operating Procedures to be effective the same date as the revision of these Rules, the Court will begin issuing judgments and mandates following dispositive action on petitions and applications for attorney fees and expenses, in the same manner as is done following dispositive action on appeals.

Whenever a petition is dismissed voluntarily (i.e., the petitioner moves to withdraw the petition) or upon the joint motion of the parties, the mandate will be issued as part of the dismissal order, per Rule 41(b) (consent dispositions).

Whenever an application for attorney fees and expenses is granted as uncontested or dismissed voluntarily (i.e., after the parties jointly move to dismiss the application), the mandate will be issued as part of the dispositive order, per Rule 41(b) (consent dispositions).

**Additional References.** A copy of the proposed revision published in September 2002 is posted on the Court's web site (Misc. Order No. 1-02, under "Miscellaneous Orders"). Additionally, under "Court News & Announcements," there is posted (1) under the title "Changes Following Comment Period," a clean copy of the September revision (with deletions and additions made as if all the proposed changes had occurred) with the changes made following the public comment period shown via underlining and strike-out, and (2) under the title "Rules Revision Comparison," a set of the newly adopted Rules showing the changes from the Rules in effect prior to this revision, is posted.